ESTATE OF AARON (ALLEN) RAMSEY

IBIA 82-58 Decided December 28, 1982

Appeal from an order denying rehearing in an Indian probate case. (BI-164A-81).

Affirmed.

1. Indian Probate: Wills: Disapproval of Will

An Indian will that evidences a rational testamentary scheme will not be disapproved.

APPEARANCES: Clara Ramsey Scott, pro se; Leslie T. McCarthy, Esq., Lewiston, Idaho, for appellees. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Clara Ramsey Scott (appellant) has filed an appeal of a July 20, 1982, order denying rehearing issued by Administrative Law Judge Keith L. Burrowes in the estate of her brother, Aaron (Allen) Ramsey (decedent). The order denying rehearing let stand a May 12, 1982, order approving will and decree of distribution issued by judge Burrowes. For the reasons discussed below, the Board affirms the order.

Background

Decedent, unallotted Nez Perce #N3534, was born on May 20, 1921, and died on July 23, 1980, at the age of 59. Decedent was survived by his wife, Josephine Paul, unallotted Nez Perce #N3378. The records of the Bureau of Indian Affairs (BIA) and of the State of Idaho show that decedent had two children, Jennifer Lynn Ramsey Jose, unallotted Nez Perce #N4263, born November 12, 1959, and Richard Mark Ramsey, unallotted Nez Perce #N5490, born October 28, 1962.

Decedent owned two Indian trust allotments on the Nez Perce Reservation at the time of his death. Under the provisions of a hand-written will executed on June 29, 1980, decedent left trust allotment #1143 "to my son

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Richard M. Ramsey and my daughter Jennifer L. Jose to share and share alike." Trust allotment #1145 was similarly left equally to Jennifer and Mark, subject to a life estate in decedent's wife. The residue of the estate was left to Mark.

Hearings into decedent's estate were held on March 30, 1981, and March 10, 1982. On March 30, 1981, the Administrative Law Judge heard testimony from BIA and Josephine relating to decedent's family history and the execution of his will. A continuance was required when neither attesting witness to the will was present and appellant raised questions concerning whether decedent was actually the father of Jennifer and Mark. Appellant stated that the two children were born before decedent and Josephine were married and that decedent had had a vasectomy when he came out of the service in the 1940's and was, therefore, incapable of fathering children. Appellant also questioned whether decedent, who was hospitalized at the time he executed his will and who died approximately 1 month later, had been acting under undue influence.

At the second hearing on March 10, 1982, one of the witnesses to the will testified that decedent was very alert and responsive on the day the will was executed and that they carried on a conversation regarding the history of the Nez Perce Tribe and the fishing controversy that was going on at that time. The witness believed that decedent was not under the influence of anyone else at the time, was comfortable with what he was doing, and that he was disposing of his property through the exercise of his own judgment. Furthermore, the witness stated that it was his habit to check with the nursing staff before acting as a witness on any will to ensure that the patient was not under the influence of a drug that might affect the mind and was otherwise able to understand the import of the action being taken. The witness checked with the nursing staff concerning decedent and was assured that, from a medical standpoint, he was capable of entering into a legal transaction (Tr. 11-14).

A second witness, a nursing nun, was unable to attend the hearing because she had moved to California, but sent an affidavit stating that she felt that the decedent was of sound mind and was not acting under duress or undue influence (Exh. 3).

Appellant was also not present at the hearing, but sent a letter, not in the form of an affidavit, in which she stated that Josephine and decedent were married in 1965 and that all of Josephine's four children, including Jennifer and Mark, were born out of wedlock and of four different fathers. She further stated that she felt that the will was executed under duress and made other disparaging comments about Josephine. This letter was accepted over the objections of counsel for Josephine for whatever probative value it might have (Tr. 14-16; Exh. 4).

Josephine testified that Jennifer and Mark were the children of decedent and that they were born during the time of their marriage. Furthermore, Josephine offered testimony contradicting the comments concerning her character made in appellant's letter (Tr. 16-19).

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Joe Daniels, a son of Josephine and a stepson of decedent, testified that decedent had always acknowledged and treated Jennifer and Mark as his own children (Tr. 20-21).

Following this hearing the Administrative Law Judge issued an order approving will and decree of distribution on May 12, 1982. In this order the Judge acknowledged that conflicting testimony had been presented, but stated that he found Josephine more credible than appellant. Consequently he found that, had decedent died intestate, his heirs at law would have been his wife Josephine, daughter Jennifer, and son Mark. Because, however, he approved decedent's will, he determined that the estate should pass under the provisions of that will.

Appellant filed a petition for rehearing which was received on June 18, 1982. The petition reiterated appellant's belief that Josephine and decedent were married after the births of Jennifer and Mark. Attached to the petition was an affidavit signed by four members of the community who stated that Jennifer and Mark were born before Josephine and decedent were married, that Josephine's four children were born out of wedlock, and that decedent could not father children. Also attached was a copy of a marriage license and certificate for Aaron Ramsey and Josephine P. Ramsey, showing that the couple was married on November 12, 1964. Appellant stated that the use of the name Ramsey by Josephine resulted from the fact that John Ramsey, the father of both appellant and decedent, had been married to Josephine's mother and that Josephine used the name Ramsey. Appellant notes that different addresses are given for decedent and Josephine on the license.

On July 20, 1982, Judge Burrowes issued an order denying petition for rehearing. The Judge noted that appellant was obviously displeased with the order he had issued, but that she had "not submitted any valid reason why the petition should be granted or why a rehearing would result in a different decision."

Appellant filed the present appeal with the Board following receipt of this order. On appeal appellant repeats her belief that Jennifer and Mark are not the children of decedent, noting that decedent was incapable of fathering children, the children's birth certificates and enrollment applications were signed only by Josephine, and the marriage certificate proves that the children were born before decedent and Josephine were married. Appellant asks for one-half of the estate or $50,000 in cash.

Discussion and Conclusions

Appellant's primary argument, to which all of her offered proof relates, is that Jennifer and Mark were not the children of Aaron (Allen) Ramsey. This argument would be of value only if decedent had died intestate. In such a case, the Administrative Law Judge and this Board would have been faced with the question of determining decedent's heirs at law and ensuring distribution of his estate to those heirs.

In this case, although the Administrative Law Judge made a finding as to the paternity of the two children in the course of his order approving

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will, that finding is not germane to the final determination. The Judge instead found that decedent's last will and testament had been properly executed at a time when the decedent was of sound and disposing mind and was not acting under duress, fraud, misrepresentation, or undue influence. Consequently, he approved the will.

[1] Assuming for the sake of argument that Jennifer and Mark were not decedent's children, there is no requirement that an Indian testator leave trust property only to his own children or other immediate family members. An Indian testator generally has full power to dispose of trust property in any way he sees fit, so long as the disposition reflects a rational testamentary scheme. See 25 U.S.C. § 373 (1976); 43 CFR Part 4, Subpart D; Tooahnippah v. Hickel, 397 U.S. 598 (1970); Estate of Ronald Richard Saubel, 9 IBIA 94, 88 I.D. 993 (1981). 1/

Evidence was presented at the hearings showing that decedent treated Jennifer and Mark as his own children. Decedent described them as his son and daughter in his will. The children's mother stated that decedent was their father. Whether or not decedent was actually Jennifer and Mark's father, it is clear that he believed he was and that he wanted to provide for them from his estate. There is nothing irrational about this testamentary scheme. It was perhaps just to avoid the types of questions appellant raises that decedent wrote his will.

The Board finds that there has been no showing either at the hearings before the Administrative Law Judge or on appeal that decedent's will should not have been approved. 2/ The questions raised by appellant are not relevant to the issue of whether the will should have been approved and have no bearing on whether the named beneficiaries can take under the will.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order denying petition for rehearing is affirmed.

1/ The Indian Reorganization Act (IRA) contains restrictions on the class of persons who may inherit trust lands governed by the Act's provisions. See 25 U.S.C. § 464, as amended by the Act of September 26, 1980, 94 Stat. 1207. However, the Nez Perce Tribe is not an IRA tribe and section 464 is therefore not applicable to this case. Even if it were, section 464 permits inheritance to tribal members, any heirs or lineal descendants of such members or to any other Indian person for whom the Secretary determines that the United States may hold land in trust. Appellees in this case satisfy any one of the foregoing requirements.

2/ Even if the Board were to disapprove decedent's will, appellant would not be entitled to share in the estate. In such a case, the entire intestate estate would pass to decedent's undisputed surviving spouse under Idaho Uniform Probate Code § 15-2-102 (1976). See 25 U.S.C. §§ 348, 372 (1976).

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This decision is final for the Department.

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Wm. Philip Horton
Chief Administrative judge

We concur:

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Franklin D. Arness
Administrative Judge

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Jerry Muskrat
Administrative Judge

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